

Executive Summary

Connecticut's Regulation of Propane

According to the U.S. Census Bureau, there are approximately 36,355 households in Connecticut heating their homes with propane (2.7 percent of all Connecticut households), and an additional estimated 145,955 households using propane for cooking, water heating, fireplace logs, and other uses (11 percent of all Connecticut households). As the map in Figure 1 indicates, propane is more likely to be used for home heating in the rural areas of Connecticut.

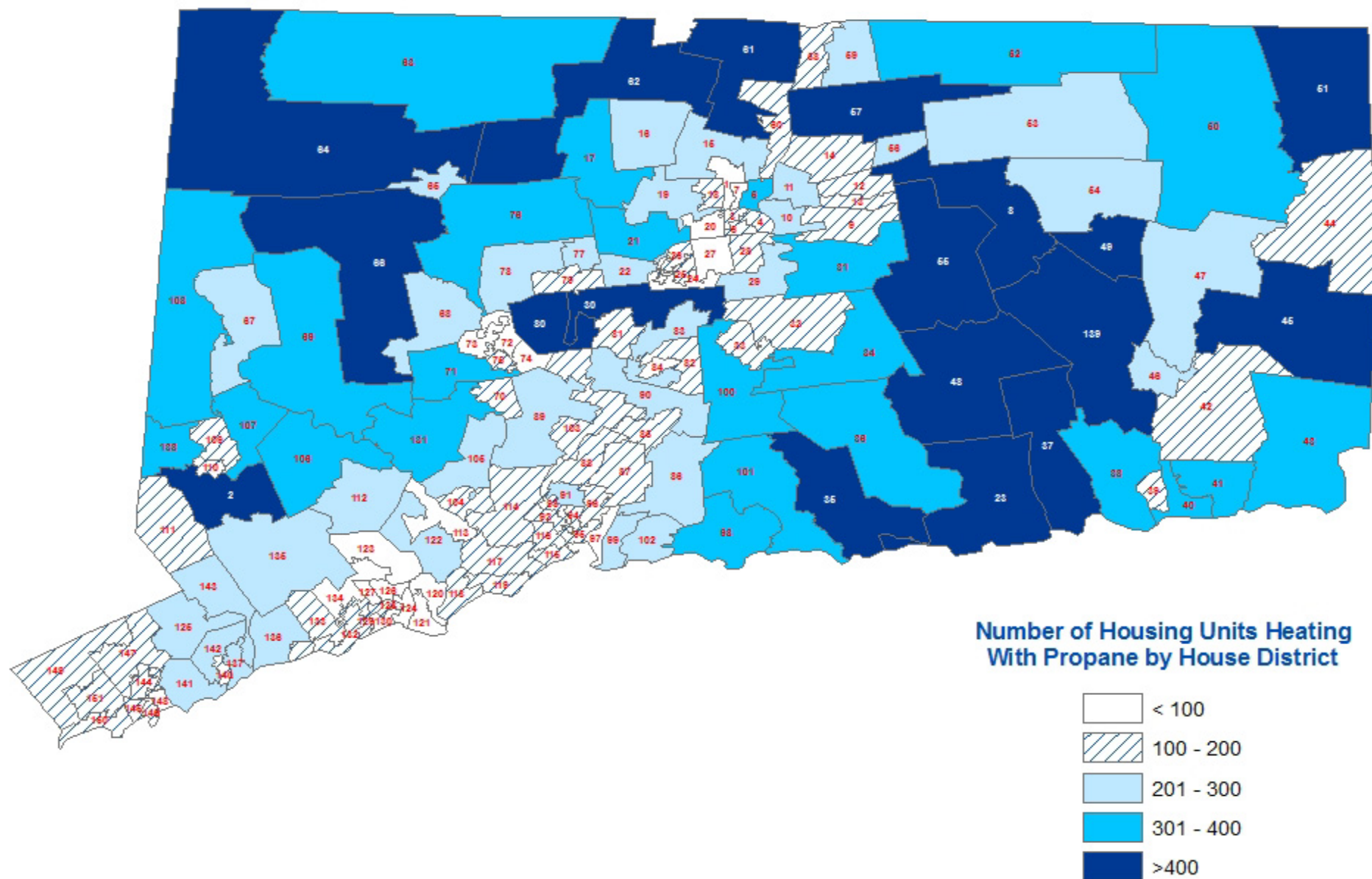
A 2009 Department of Consumer Protection (DCP) investigative report of propane complaints identified several major consumer concerns relating to pricing, contracting, safety and service. In general, DCP found consumers often do not realize or understand the contract terms and conditions which they have agreed to. In particular, there is a lack of transparency and disclosure regarding pricing and implications of tank ownership.

The Legislative Program Review and Investigations Committee (PRI) voted in March 2011 to conduct a study to assess Connecticut's regulation of propane and the propane industry and determine if the current rules best serve residents. As occurs in many other states, Connecticut fire prevention code limits who can fill a propane tank to either the owner of the tank or another "upon the owner's authorization." Other restrictions apply to connecting, disconnecting, and transporting tanks. These laws are commonly referred to as "container" laws. The rationale of maintaining the container law, regulating pricing, and expanding contract disclosure and other requirements were examined as part of this study.

Study Methodology

The sources of information for this PRI study were a combination of interviews, published reports, record reviews, and analysis of applicable national and Connecticut data. PRI interviewed staff from the state departments of Consumer Protection, Public Safety's Office of the State Fire Marshal, Public Utility Control (DPUC), the Office of Policy and Management's Energy Management Unit, and the Antitrust Division within the Office of the Attorney General. Committee staff also spoke to representatives of national, regional and state propane associations as well as the Independent Connecticut Petroleum Association, the National Fire Protection Association, propane companies, consumer advocates, insurance companies, consumers, and complainants. PRI staff conducted telephone interviews with staff in state fire marshal offices and energy authorities in Alaska, Idaho, Mississippi, Montana, New York, Rhode Island, Vermont, West Virginia, and Wyoming. Telephone conversations were also held with local fire marshals, tax assessors, and other local officials. PRI staff also reviewed industry literature and related studies. In addition, committee staff examined a random sample of 50 consumer complaints made against propane dealers since the conclusion of the 2009 DCP investigative report.

Figure 1. Number of Housing Units Heating With Propane by House District



Current Propane Regulation

The propane industry is guided by national safety standards (National Fire Protection Association NFPA 54 and NFPA 58) that are adopted and referenced by federal and state regulations. On the state level, four agencies are charged with roles and responsibilities for the propane industry: Department of Consumer Protection (oversees trade practices, fuel business operations, and handling of complaints), Department of Public Safety (establishes/enforces fire prevention code), Department of Public Utility Control (conducts safety inspections of select propane systems), and Office of Policy and Management (compiles and monitors/publishes propane prices).

Container Law

The container law limits who can fill a propane tank to either the owner of the tank or someone authorized by the owner. The vast majority of consumers rent or lease their tanks from propane dealers. Frequently, consumers do not fully understand the implications of tank rental/lease agreements including that it can limit who may fill the tank. The rationale given by the propane industry for the container law fall into three categories: safety, assignment of liability, and economic. While fire statistics seem to refute the safety reasons given by the propane industry for the container law, there is some evidence in support of the propane industry's arguments regarding the assignment of liability and economic rationale.

Should there be an accident, the container law makes it simpler to assign fault or liability. Unless the propane industry changes its current business model, the only way for dealers to recoup their financial outlay to purchase and install a tank for a customer is through the sale of propane to the customer. In examining the seven states that do not have a container law in statute or regulation, PRI found all to implement the container law in practice through contracts between propane dealers and customers, limiting customers to purchase of propane from the contracted propane dealer.

The most significant concern regarding the container law is its impact on consumer choice. Within the constraints of the container law, the following three questions relating to consumer choice need to be answered: 1) Are consumers prohibited from owning their own propane tanks? 2) Is there a lack of competition/only a single propane dealer available to consumers? 3) Are consumers unable to switch propane dealers? PRI found that, regardless of the container law, currently:

- 1) Consumers have the ability to own their propane tanks;
- 2) Competition seems to exist, with consumers able to choose from an average of 11 propane dealers serving each town or city; and
- 3) Consumers have the ability to switch propane dealers.

While PRI does not propose elimination of the container law, recommended changes to contract terms and conditions will make all these consumer options easier.

Propane Pricing

In general, the price of propane is determined by a number of market factors including the charge to retailers by the wholesalers, volume used by the customer, prices of competing fuels, and supply and demand. Connecticut has the lowest average price per gallon of propane when compared with the other New England and Eastern states. Within Connecticut, however, wide variation exists in the price per gallon charged by propane dealers.

Except for Hawaii, no other state currently regulates the price of propane for individual homeowners. Some states (e.g., Colorado, Michigan, Montana, Nevada), however, regulate price when there is a propane pipeline or common propane supply system serving 10 or more users.

Consumer Protections

In 2006, propane companies were made subject to the same consumer protections and statutory restrictions given to other heating fuel dealers. The addition of the statutory requirements as well as general discontent over fuel price spikes and media reports of consumer concerns surrounding the sale of propane fuel, tank ownership and rental appears to have generated an increasing number of complaints to DCP in recent years. As a result, the department conducted an investigation and issued a report in 2009 that uncovered a number of recurring issues.

Despite current restrictions on how propane is sold to customers, consumers often find terms and conditions of the contracts to be vague or allow dealers to make changes to various fees with little to no notice to the consumer. In other words, consumers may be agreeing to items in contracts without any awareness or full understanding of the implications. This is due in part to a lack of consumer information and knowledge of the business operations of the propane industry. Further transparency regarding the unit price and potential associated fees is needed. Additionally, state law is silent on consumer protections regarding propane tank rental/lease or options to buy, nor do current laws protect consumers in dispute with dealers having exclusive filling rights.

Based on its investigation, DCP submitted legislative and regulatory changes to address various complaint areas and otherwise clarify propane issues for the consumer. However, to date, neither process has successfully effected change. Consistent with several changes proposed by DCP, PRI recommends expanding contract disclosure and other requirements to promote clarification and transparency of contract terms and conditions—including contract length, options to rent or purchase a propane tank, and contract termination—as well as an establishment of a consumer bill of rights, and stronger enforcement tools for DCP.

Currently, some public information (via OPM's website) is available to consumers for comparison shopping. Because there is such variability in the price of propane across dealers, publishing the range (highest and lowest prices) in addition to the current average price, and publishing price information year-round instead of just during October-March, would provide consumers with information useful in the assessment of price per gallon charges.

PRI further concludes that given preliminary analyses and practical considerations, the regulatory role of DPUC over propane—including price regulation--should not be expanded at this time. However, the currently inactive Home Heating Oil Planning Council should be convened as intended, to examine the market conditions of the propane industry, including possible regulation of price for propane systems serving 10 or more customers.

RECOMMENDATIONS

1. The Connecticut statutes shall be amended to require that all contracts for the sale of heating fuel:

- **be in writing and contain all the terms and conditions for delivery and the amount of fees, charges, surcharges, or penalties allowed by law;**
- **Not include any liquidated damages amount beyond the actual damages to the dealer because of a breach of the contract by the consumer.**

Any necessary data field that must be handwritten on such contract must be in clear and legible writing.

2. No written contract between a dealer and retail consumer for the fuel can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.

3. With respect to guaranteed price plans, the Connecticut General Statutes shall be amended to ensure:

- **Any guaranteed price plan that includes the terms such as “capped”, “maximum”, “not to exceed”, or any other similar terms or descriptions, must not increase above the specified price per gallon;**
- **Each contract state in clear and specific language how and under what circumstances the price to customers may decrease during the contract period; and**
- **Guaranteed price contracts may not include language that would allow automatic renewal.**

4. Statutory provisions shall be established for the use of electronic signature for heating fuel contracts as outlined in the proposed regulations and in compliance with the Connecticut Electronic Signatures Act and any pertinent federal provisions. Specifically, the written contracts requirements may be satisfied telephonically if the retail fuel seller:

- **has previously provided consumer with written notification of all the terms and conditions of the contract, except for the contract duration, the unit price, and the maximum number of units covered by the contract;**

- uses an interactive voice response system or similar technology that gives the consumer the contract duration, the unit price and the maximum number of units covered by the contract;
 - keeps a recording of the consumers agreement to each term and condition for the contract period;
 - provides the consumer with a confirmation letter and written copy of the consumer's agreement to terms and conditions; and
 - retains a copy of each confirmation letter.
5. **Contracts between propane dealers and consumers shall be for a period no greater than eighteen months.**
 6. **The Connecticut General Statutes shall be amended to require that the rent or lease of a propane tank must be in writing and contain all the terms and conditions and the amount of fees, charges, surcharges or penalties allowed by law. The tank rental or lease agreement must include written description of the tank, any installation charges, rental payments or fees, how contract may be terminated, and the amount of credit for unused fuel.**
 7. **No written contract between a dealer and retail consumer for the lease of equipment can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.**
 8. **Each contract must include an assignable option to buy provision whereby the consumer may purchase the leased tank and associated equipment for a specified price as disclosed in the contract.**
 9. **The Connecticut statutes shall be amended to allow consumers, who are engaged in mediation efforts with a propane dealer who has exclusive fill requirements for its tank, the opportunity to make a cash purchase of fuel during the heating season.**
 10. **The Connecticut General Statutes shall be amended to include the establishment of a consumer bill of rights prepared by the DCP commissioner. The consumer bill of rights shall be made available by the registered propane dealer to consumers prior to entering into a contract. Disclosure notice of such bill of rights may be satisfied by written notice to consumers that the company's bill of rights is available on the internet website or by calling the company's local business office.**
 11. **DCP should continue to pursue efforts to streamline its statutory provisions and prepare any necessary statutory definitions with the purpose of providing clarifying language needed to facilitate enforcement activities. In addition, existing references to penalty violations found in C.G.S. §16a-21 and §16a-22k regarding sales of heating oil and unfair trade fuel practices shall be increased. Specifically, the change will include a fine of \$500 for first offense and no more than \$750 for second**
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subsequent offense in a three-year period. Thereafter, there shall be a fine of not more than \$1,500 for each subsequent offense within the three year period of the prior offense.

In addition, these increased penalties shall be applied to violations of C.G.S. § 16a-22a regarding prohibition of requiring minimum deliveries and §16a-23r referencing various dealer business practices violations under CUTPA.

12. DCP may revoke or suspend the registration of any company that does not respond to consumer complaint per DCP request within 30 days.
13. The DCP commissioner may compel by subpoena, at the commissioner's discretion, the production of any documents from any dealer registered under C.G.S. §16a-23m regarding compliance with the DCP statutory provisions.
14. The statutory provisions relating to heating fuel dealer registration with DCP shall be amended to require registered companies, when applying for their annual DCP registration certificate, to disclose the names of all affiliated companies registered with DCP that are under common ownership or have interlocking board of directors. In addition, the statute will be clarified to require companies to obtain a separate registration for each company it does business as or advertises under.
15. The Home Heating Oil Planning Council shall be convened by OPM pursuant to C.G.S. §16a-23t to examine the market conditions of the propane industry for evidence of operational or infrastructure conditions that should be addressed to enhance the home heating fuel markets reliable, free, and fair operation. In addition, the council membership shall be statutorily amended to include the Department of Consumer Protection commissioner or his designee.
16. Any owner of propane systems serving either 10 or more customers, two or more customers located in a public place, or a single customer if the propane system is not located entirely on the customer's property, shall notify the DPUC of the existence of such a system.
17. Weekly surveying of propane dealer prices by OPM should be expanded to occur year-round within available appropriations. The average price for propane should be published year-round on the OPM website.
18. On a weekly basis, the highest and lowest prices for propane should be published on the OPM website in addition to the average price per gallon of propane.
19. OPM should include a more detailed explanation of the propane prices listed on their state heating oil and propane price survey website.